Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

IN RE ALEXBLUBEAR *v.* UNITED STATES

CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 13–02. Argued July 28, 2022—Decided September 4, 2022

Plaintiff AlexBlubear filed a case seeking relief within the District of Columbia, which prompted a certified question to be filed on behalf of the district court. The question sought to clarify the requirements for standing within courts at the federal level, and whether the plaintiff possesses those requirements. The plaintiff believes that he has standing to challenge the constitutionality of the Public Law 84–5, the Christian-Islam Values Act for repealing Public Law 80–12, the Pride Act of 2020. Likewise, the plaintiff asserts that he possesses standing for suit in order to protect his employees who might identify as lesbian, gay, or transgender.

Held: The Plaintiff does not possess the required elements for standing and does not meet standards set forth for judicial intervention. Plaintiffs must have suffered an injury-in-fact, causal connection between the injury or conduct in their complaint, and then of course likely that the injury will be redressed by a favorable decision.

(a) The Plaintiff failed to suffer an injury-in-fact, which fails to satisfy the requirements set forth in *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555. Pp. 1-4.

(b) The challenged law within the case is already moot and irrelevant following the court's decision in *Bostock* v. *Clayton County*, 590 U. S. ___ which protects LGBTQIA+ employees from discrimination under Title VII. Pp. 4-6.

VINSON, C. J., delivered the opinion of the Court. BUTLER, J., filed an opinion concurring in part and concurring in the judgment.

SUPREME COURT OF THE UNITED STATES

No. 13–02

IN RE ALEXBLUBEAR *v.* UNITED STATES

CERTIFIED QUESTION FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[September 4, 2022]

CHIEF JUSTICE VINSON delivered the opinion of the Court.

In the U. S. District Court, the plaintiff–AlexBlubear– filed a lawsuit to challenge the constitutionality of Public Law 80-12, the Islam-Christian Values Act. This lawsuit came from the plaintiff asserting that he had standing to file suit on the grounds to protect his employees who might identify as lesbian, gay, or transgender from undue discrimination. This standing asserted by the plaintiff stems from Public Law 80–12, the Pride Act of 2020 being repealed. Public Law 80–12 protected interests of lesbian, gay, and transgender employees by requiring the Department of Commerce and Labor to enforce fair employment practices regarding sexual orientation pursuant to 42 U. S. Code §2000e–2, which is also known as Title VII of the Civil Rights Act of 1964. The question today though, remains as to whether or not the plaintiff meets the elements to establish standing.

I

A

The plaintiff asserts that the district court has the juris-

diction to hear his suit, as the federal government has committed a violation of public law. The plaintiff, however, does not satisfy the elements present to constitute standing within a federal court. In *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 (1992), this Court upheld that there are three elements to determine whether an individual meets standing requirements to file suit. There first must have been an injury-in-fact which was suffered by the plaintiff and is concrete and particularized, then causal connection regarding the injury and conduct present in the complaint, and of course the likelihood that the injury could be redressed by judicial remedy. *Lujan*, *supra*, at 561 (citing *Los Angeles* v. *Lyons*, 461 U. S. 95, 102 (1983); *Simon* v. *E. Kentucky Welfare Rts. Org.*, 426 U. S. 26, 27 (1976)).

Within this case, the plaintiff did fail in their complaint to demonstrate an injury-in-fact has occurred, as there have been no damages resulting from Public Law 80-12, the Pride Act of 2020 being repealed. Likewise, there is no causal connection as an injury has not occurred in regard to the complained about behavior. No injury has been demonstrated being afflicted to neither the plaintiff nor his employees. Then of course, it can be presumed that failing to meet two of three elements, judicial intervention will not result in the matter redressed with a favorable decision. *Simon, supra*, at 46 (explaining the redressability of cases in controversies invoking federal jurisdiction). The simple matter remains, that any party seeking to invoke federal jurisdiction bears the ultimate burden of establishing elements of their standing. See *Warth* v. *Seldin*, 422 U. S. 490, 507 (1975). There remains no cause for judicial intervention in a situation where there is simply no illegal action taking place, and the plaintiff further fails to demonstrate an injury. *Ibid.*

In regard to the protection of employees, the employer would maintain standing in a third-party capacity to file

suit if adversely impacted through an injury-in-fact, but this would also implicate an injury has to first occur. Essentially when a government statute or policy prohibits or restricts an individual, a prohibited act that the constitution was intended to prevent, the indirectness of the occurred injury would not deprive an individual of their rights nor standing under 28 U. S. C. § 1253 when interlocutory or permanent injunctions are rendered by a district court. See *Roe* v. *Wade*, 410 U. S. 113, 124 (1973). The ideal situation with this in mind would occur though with established standing in a civil proceeding at which phase the aforementioned order can be lawfully rendered. Once again however, the plaintiff has yet no injury to constitute standing in regard to complained conduct on the part of the United States which means an interlocutory or injunctive relief could not occur.

B

An important consideration within this case is understanding the importance that our court has within the system of American government. Elements of standing exist to ensure the court is ultimately limited in its ability to handle controversies and exercise power with respect to 'constitutional principles.' *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 221–227 (1974). As stated by this court previously, "[t]he Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action." *Warth*, *supra*, 422 U. S. 490, 499 (1975). These limitations are important when considering the applicability of Art. III standing, and in limiting the power of the judiciary. The court cannot in any case void, alter, or create legislation that might be inconsistent with

the Constitution, unless otherwise adjudging the rights of litigants in actual controversies invoking federal jurisdiction. See *Baker* v. *Carr*, 369 U. S. 186, 204 (1962).

II

Next, we turn to the issue that the matter brought before the court not only has no afflicted injury, but that the issue is moot. The courts can only resolve active disputes arising under Art. III review, but within this case there is no dispute. Section 3 of Public Law 84-5, the Islam-Christian Values Act, states at line (a) that "Pub. L. 80-12, the Pride Act of 2020 is repealed in full and deemed null and void." This is the only true effect of the bill practically speaking. Especially, as this court has upheld in *Bostock* v. *Clayton County*, 590 U. S. ___ (2020) that sexual orientation for an employee is already protected pursuant to 42 U. S. Code §2000e–2. With the repeal of Public Law 80-12, the Pride Act of 2020, individuals still remain protected under the color of law through the Civil Rights Act of 1964 from sexual orientation-based discrimination in the workplace or in regard to employment practices. This is a matter asked and answered by this Court, and we maintain that no dispute exists that would otherwise prompt an injury afflicted upon the plaintiff nor his employees given the protection provided under § 2000e–2. *Ibid.*

III

With an in-depth examination of this case, we agree that the plaintiff does not maintain standing as he failed to suffer from an injury. Likewise, there is no current contest, nor any current standing government order or statute that adversely effects the rights of lesbian, gay, or transgender employees from protection as held in *Bostock, supra.* Art. III is unique in the fact that it both provides a definition for controversies to be settled, while at the same time providing for a limited scope upon within the court is confined to operate within. These limitations are for the protection of our

system of government and exist to ensure that the application of law does not interfere with the legislative activities of the Congress, nor should the court's activities adversely impact the executive from enforcing the laws. By utilizing precedent set by this court regarding equal employment opportunities, and also standing requirements, it should be concluded that we would be doing a grave injustice to the American people by changing the precedent surrounding standing. The burden in instances of standing falls on the party invoking federal jurisdiction, not on the courts to establish standing for the invoking party. It is for this reason that I maintain the plaintiff does not have Art. III standing, as they cannot establish all needed elements to ensure an actual controversy exists.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–02

IN RE ALEXBLUBEAR, PETITIONER *v.* UNITED STATES

CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[September 4, 2022]

JUSTICE BUTLER, concurring in part and concurring in the judgment.

The "law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Raines* v. *Byrd*, 521 U. S. 811, 820 (1997) (internal quotation marks omitted). Separation of powers "was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *INS* v. *Chadha*, 462 U. S. 919, 946 (1983) (internal quotations marks omitted).

Therefore, we start with the text of the Constitution. Article III confines the federal judicial power to the resolution of "Cases" and "Controversies." For there to be a case or controversy under Article III, the plaintiff must have a "'personal stake'" in the case—in other words, standing. *Raines*, 521 U. S., at 819. To demonstrate their personal question: "'What's it to you?'" Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983).

To answer that question in a way sufficient to establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant;

(iii) that the injury would likely be redressed by judicial relief. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560-561 (1992). If "the plaintiff does not claim to have suffered an injury that the defendant does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal courts to resolve." *Casillas* v. *Madison Avenue Assocs., Inc.*, 926 U. S. F. 3d 329, 333 (CA7 2019) (Barrett, J.).

Requiring a plaintiff to demonstrate a concrete and particularized injury caused by the defendant and redressable by the court ensures that federal courts decide only "the rights of individuals," *Marbury* v. *Madison*, 1 Cranch 137, 170 (1803), and that the federal courts exercise "their proper function in a limited and separated government," Roberts, Article III Limits on Statutory Understanding, 42 Duke L. J. 1219, 1224 (1993). Under Article III, federal courts do not adjudicate hypothetical or abstract disputes. Federal courts do not possess a roving commission to publicly opine on every legal question. Federal courts do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities. However, we may sometimes do this through the power of Anytime Review. As Madison explained in Philadelphia, federal courts instead decide only matters "of a Judiciary Nature." 2 Records of the Federal Convention of 1787, p. 430 (M. Farrand ed. 1966).

In sum, under Article III, a federal court may resolve only "a real controversy with real impact on real persons." *American Legion* v. *American Humanist Assn.*, 588 U. S. ___, ___ (2019) (Gorsuch, J., concurring in judgment) (slip op., at 10).

The question in this case, however, focuses on the Article III requirement that the plaintiff's injury in fact to be "concrete"—that is, "real, and not abstract." *Spokeo*, *Inc.* v. *Robins*, 578 U. S. 330, 340 (2016) (internal quotations marks omitted); see *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014); *Summers* v. *Earth Island Institute*, 555

U.S. 488, 493 (2009); *Lujan*, 504 U. S., at 560; *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 220-221 (1974).

What makes a harm concrete for purposes of Article III? As a general matter, the Court has explained that "history and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider." *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 274 (2008); see also *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 102 (1998). And with respect to the concrete-harm requirement in particular, this Court's opinion in *Spokeo* v. *Robins* indicated that courts should assess whether the alleged injury to the plaintiff has a "close relationship" to harm "traditionally" recognized as providing a basis for a lawsuit in American courts. 578 U. S., at 341. That inquiry asks whether plaintiffs have identified a close historical or common-law analogue for their asserted injury. *Spokeo* does not require an exact duplicate in American history and tradition. But *Spokeo* is not an open-minded invitation for federal courts to loosen Article III based on contemporary, evolving beliefs about what kinds of suits should be heard in federal courts.

As *Spokeo* explained, certain harms readily qualify as concrete injury under Article III. The most obvious are traditional tangible harms such as physical harms and monetary harms. If a defendant has caused physical or monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III.

Various intangible harms can also be concrete. Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts. *Id.*, at 340-341. Those include, for example, reputational harms, disclosure of private information, and intrusion upon seclusion. See, *e.g.*, *Meese* v. *Keene*, 481 U. S. 465, 473 (1987) (reputational harms); *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 733 (2008) (disclosure of

private information; see also *Gadelhak* v. *AT&T Services, Inc.*, 950 F. 3d 458, 462 (CA7 2020) (Barrett, J.) (intrusion upon seclusion). And those traditional harms may also include harms specified by the Constitution itself. See, *e.g.*, *Spokeo*, 578 U. S., at 340 (citing *Pleasant Grove City* v. *Summum*, 555 U. S. 460 (2009) (abridgment of free speech), and *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520 (1993) (infringement of free exercise)).

In determining whether a harm is sufficiently concrete to qualify as an injury in fact, the Court in *Spokeo* said that Congress' views may be "instructive." 578 U. S., at 341. Courts must afford due respect to Congress' decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's violation of that statutory prohibition or obligation. See *id.*, at 340-341. In that way, Congress may "elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." *Id.*, at 341 (alterations and internal quotation marks omitted); see *Lujan*, 504 U. S., at 562-563, 578; cf., *e.g.*, *Allen* v. *Wright*, 468 U. S. 737, 757, n. 22 (1984) (discriminatory treatment). But even though "Congress may 'elevate' harms that 'exist' in the real world before Congress recognized them to actionable legal status, it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." *Hagy* v. *Demers & Adams*, 882 F. 3d 616, 622 (CA6 2018) (Sutton, J.) (citing *Spokeo*, 578 U. S., at 341).

Importantly, this Court has rejected the proposition that "a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Spokeo*, 578 U. S., at 341. As the Court emphasized in *Spokeo*, "Article III standing requires a concrete injury even in the context of a statutory violation." *Ibid.*

Congress' creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III any more than, for example, Congress' enactment of a law regulation speech relieves courts of their responsibility to independently decide whether the law violates the First Amendment. Cf. *United States* v. *Eichman*, 496 U. S. 310, 317-318 (1990). As Judge Katsas has rightly stated, "we cannot treat an injury as 'concrete' for Article III purposes based only on Congress' say-so." *Trichell* v. *Midland Credit Mgmt., Inc.*, 964 F. 3d 990, 999, n. 2 (CA11 2020) (sitting by designation); see *Marbury*, 1 Cranch, at 178; see also *Raines*, 521 U. S., at 820, n. 3; *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41, n. 22 (1975); *Muskrat* v. *United States*, 219 U. S. 346, 361-362 (1911).

For standing purposes, therefore, an important difference between (i) a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal, and (ii) a plaintiff's suffering concrete harm because of the defendant's violation of federal law. Congress may even enact legal prohibitions and obligations. And Congress may create causes of action for plaintiffs to sue defendants who violate those legal prohibitions or obligations. But under Article III, an injury in law is not an injury in fact. Only those plaintiffs who have been *concretely harmed* by a defendant over that violation in federal court. As then-Judge Barret succinctly summarized, "Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *Casillas*, 926 F. 3d, at 332.

To appreciate how the Article III "concrete harm" principle operates in practice, consider two different hypothetical plaintiffs. An injured plaintiff who sues in those circumstances is, by definition, not seeking to remedy any harm to

herself but instead is merely seeking to ensure a defendant's "compliance with regulatory law" (and, of course, to obtain some money via the statutory damages). *Spokeo*, 578 U.S., at 345 (Thomas, J., concurring) (internal quotation marks omitted); see *Steel Co.*, 523 U. S., at 106-107. Those are not grounds for Article III standing. A regime where Congress could freely authorize *unharmed* plaintiffs to sue defendants who violate federal law not only would violate Article III but also would infringe on the Executive Branch's Article II authority. We accept the "displacement of the democratically elected branches when necessary to decide an actual case." Roberts, 42 Duke L. J., at 1230. But otherwise, the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch, not within the purview of purview of private plaintiffs (and their attorneys). Private plaintiffs are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law. See *Lujan*, 504 U. S., at 577.

In sum, the concrete-harm requirement is essential to the Constitution's separation of powers. To be sure, the concrete-harm requirement can be difficult to apply in some cases. Some advocate that the concrete-harm requirement be ditched altogether, on the theory that it would be more efficient or convenient to simply say that a statutory standing. But as the Court has often stated, "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *Chadha*, 462 U. S., at 944. So it is here.